

LYONS & FLOOD, L LP  
65 W 36<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10018  
(212) 594-2400

Attorneys for Defendant  
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LIBERTY MUTUAL GROUP INC.  
as subrogee of BODGER SEEDS, LTD

08 Civ. 00223 (JSR)

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.

**ANSWER TO  
COMPLAINT**

Defendant.  
-----X

Defendant MEDITERRANEAN SHIPPING COMPANY, S.A., ("MSC" or "Defendant"), by its attorneys, Lyons & Flood, LLP, answering plaintiff's Complaint, alleges upon information and belief as follows:

1. Admits that this is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and that jurisdiction is predicated upon 28 U.S.C. § 1333.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Admits that MSC, at all material times, was and still is a corporation duly organized and existing under and by virtue of the laws of a foreign country, and was engaged in business as a common carrier by water for hire and was the time charterer of the MSC ILONA, a

vessel engaged in the common carriage of merchandise by water for hire, among others, the ports of Tanga, Tanzania and Long Beach, California, but except as so specifically admitted, denies the remaining allegations in paragraph 3 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

5. Admits that a shipment said to contain flower seeds, contained in a container numbered MSCU1550902 was transported from the port of Tanga to the port of Long Beach, pursuant to a bill of lading issued by MSC, but except as so specifically admitted, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Admits that MSC delivered the shipment at Long Beach, on or about April 10, 2007, but except as so specifically admitted, denies the remaining allegations in paragraph 7 of the Complaint.

8. Denies the allegations contained in paragraph 8 of the Complaint.

9. Denies the allegations contained in paragraph 9 of the Complaint.

10. Denies the allegations contained in paragraph 10 of the Complaint

#### **FIRST AFFIRMATIVE DEFENSE**

11. The Complaint fails to state a cause of action upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

12. Plaintiff is not the real party in interest and is not entitled to maintain this action.

**THIRD AFFIRMATIVE DEFENSE**

13. The shipment which is the subject of this suit was carried pursuant to the terms and conditions of certain bills of lading and tariffs, by which the shippers, owners, consignees, and holders of said bills of lading agreed to be bound, and was also subject to the United States Carriage of Goods By Sea Act, 46 U.S.C. § 1300, et seq. ("COGSA"), and MSC claims the benefits of all rights, immunities, exonerations, and limitations contained therein, and in COGSA, including but not limited to, peril of the sea, Act of God, insufficiency of packaging, act of shipper, inherent vice, etc.

**FOURTH AFFIRMATIVE DEFENSE**

14. The nature and valuation of the goods were not declared by the shippers before the shipments and inserted in the bills of lading. If plaintiff is entitled to any recovery, which is denied, such recovery should be limited to \$500 per "package" or "customary freight unit," in accordance with the above quoted provisions of COGSA and MSC's bills of lading.

**FIFTH AFFIRMATIVE DEFENSE**

15. Due diligence was exercised on behalf of the carrier to make the vessel and its appurtenances seaworthy, and to make the holds and all other parts of the ship in which the goods were carried fit and safe for the reception, carriage and preservation of such shipments. Any losses, injuries or damages alleged to have been suffered by the shipment was due to neglect, an act of omission, breach of express or implied warranties, breach of bailment or breach of contract on the part of the plaintiff, shipper, its agents, or employees, or due to a cause or causes for which this defendant is not liable or responsible by virtue of the provisions of COGSA, or provisions of said bills of lading or tariff or other applicable provisions of contracts of carriage or of law.

**SIXTH AFFIRMATIVE DEFENSE**

16. If any losses or damages were sustained by the shipments referred to in the Complaint, which is denied, such losses or damages were caused by or contributed to by the plaintiff or third-parties, and not by defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

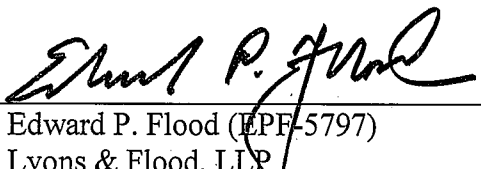
17. Plaintiff failed to properly and fully mitigate its damages.

WHEREFORE, Defendant MEDITERRANEAN SHIPPING COMPANY, S.A. respectively requests judgment dismissing the Complaint, and awarding it costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief that this Court may deem just and proper.

Dated: New York, New York  
February 20, 2008

LYONS & FLOOD, LLP  
Attorneys for Defendant  
MEDITERRANEAN SHIPPING COMPANY S.A.

By: \_\_\_\_\_

  
Edward P. Flood (EPF-5797)  
Lyons & Flood, LLP  
65 W 36<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10018  
(212) 594-2400

TO: BADIAK & WILL, LLP  
106 Third Street  
Mineola, New York 11501  
Attn: Alfred J. Will, Esq.  
Firm Ref: 07-J-011-AW

**CERTIFICATE OF SERVICE**

Erika Tax declares and states that:

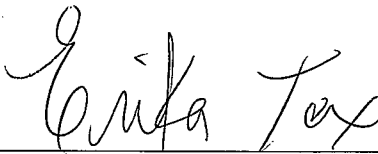
I am not a party to these actions, am over 18 years of age and reside in Queens, New York. I am an employee with Lyons & Flood, LLP, attorneys for MEDITERRANEAN SHIPPING COMPANY S.A., with offices at 65 West 36<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, New York 10018.

On February 20, 2008, I served true copies of the Answer to Complaint upon:

BADIÁK & WILL, LLP  
106 Third Street  
Mineola, New York 11501  
Attn: Alfred J. Will, Esq.

by U.S. Mail, first-class postage pre-paid, addressed to the last known address of the addressees as indicated above.

Executed on: February 20, 2008

  
\_\_\_\_\_  
Erika Tax

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